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OFFICE OF PETITIONS

In re Application of
Wolfgang Lashofer, et al.
Application No. 10/797,976
Deposited: March 11, 2004
Attorney Docket No. ANDPAT/183/UA

DECISION DISMISSING
PETITION

This is a decision on the petition filed March 24, 2004 and supplemented on July 2, 2004, requesting that the above-identified application be accorded a filing date of March 10, 2004, instead of the currently accorded date of March 11, 2004.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)). No extensions of time pursuant to the provisions of 37 CFR 1.136 are permitted. If reconsideration is not requested within the time period specified above, this application will be forwarded to Technology Center 1700 for examination in due course with the presently accorded filing date of November 29, 2001.

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on March 10, 2004, pursuant to the requirements of 37 CFR 1.10.

Paragraph (a) of 37 CFR 1.10 states that:

“Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the “date-in” on the “Express mail” mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(Emphasis supplied). Paragraph (d) of 37 CFR 1.10 states that:

“Any person filing correspondence under this section that was received by the Office and delivered by the “Express Mail Post Office to Addressee” service of the USPS, who can show that the “date-in” on the “Express Mail” mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the “Express Mail” mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by “Express Mail”; and
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in “Express Mail Post Office to Addressee” service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the “Express Mail Post Office to Addressee” service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include a “showing which establishes to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in “Express Mail Post Office to Addressee” service prior to the last scheduled pickup for that day.” In addition, the showing “must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the ‘Express Mail Post Office to Addressee’ service of the USPS.”

The petition is accompanied by a copy of counsel’s mail log, which contains an entry for Express Mail label no. EV390694757US, the same Express Mail number found on the application transmittal letter. However, the mail log does not contain an explanation, label, or some other notation, which makes it unclear what each column represents. Beside the entry of Express Mail label number EV390694757US, is “3 10 – 515P.” Additionally, the entry for the package in question has an arrow that appears to pointing to another line, which shows “Post Office – I. O’Brien – 3-9-04 – 4:55 p.m.,” but the line next to the entry in question shows “750 Main St. – TY – 3/9/04 – 3:00 P.” Also, there is an entry between these two lines that contains the initials “LC,” a date of 3-10-04, but there’s no indication as to location of the drop-off and no time is mentioned. Which of the three lines corresponds with the entry of the package in question? Reading two of the entries, one could question whether the package was actually deposited with the USPS on March 9, 2004, instead of March 10, 2004, as petitioner alleges. Furthermore, it is not clear whether the package was deposited at the Post Office or 750 Main Street. In reading the entry between the two entries just mentioned, it does show that a deposit was made on March 10th, but the location and time are missing. What was the actual date and time the package was deposited? If the deposit was made on March 10th as petitioner alleges and as part of the log suggests, where and what time was the package deposited? Additionally, what is the time of the last pickup for Express Mail packages

at the location where the package in question was deposited? It is noted that all of the other entries on the log shows that deposits were made before 5:00 pm. The entry providing the Express Mail label number is the only entry where a deposit was made after 5:00 pm, namely 5:15 pm. Another entry suggests that a package was deposited at 11:56 pm but the information provided thereafter, states 12:26 pm. It can be assumed that someone mistakenly wrote 11:56 pm, instead of 11:56 am on this particular entry. Nevertheless, one can suppose that the last pickup is before 5:00, which would explain why the package in question was not picked up until the following day. The log simply does not corroborate the allegations made in the petition and does not concretely show that the evidence came into being after the deposit and within one business day of the deposit. Moreover, a review of the USPS website's Track and Confirm shows that the package was deposited with the USPS on March 11, 2004.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 Post Office Box 1450
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Telephone inquiries concerning this matter may be directed to Marianne Jenkins at (571) 272-3223.



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